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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/823,379

Applicant(s)

WHITCOMB, CARL E.

Examiner

Son T. Nguyen

Art Unit

3643

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-68 is/are pending in the application.
- 4a) Of the above claim(s) 25,30,42-59 and 64 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24,26-29,31-38,40,41,60-63,65-68 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claims 65-68 are objected to because of the following informalities: The claims contain excerpts of the specification, which are improper. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. **Claim 65** is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification fails to explain how the channels' cross-sectional profile is rectangular. From the elected species, figs. 2A-2E, it appears that the cross-sectional profile is either triangular or arched. It is unclear how the cross-sectional profile can be rectangular.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 1,2,5,6,8-24,29,36-38,40,41,60,61,65-68** are rejected under 35 U.S.C. 102(b) as being anticipated by Coplen (2818681).

For claim 1, Coplen teaches in figs. 3-5, a plant container, comprising: a sidewall 1 having a plurality of shoulders 9,10,2,21,20; and a base 15 supported on the shoulders, the base having an upwardly facing surface (see fig. 3) with a plurality of radially directed channels (created between grooves 19 or grooves 19 themselves can be considered channels), and wherein the upwardly facing surface is essentially free from obstructions to radial root growth. Note, the word "essentially" does not mean that it is absolutely free from obstructions. Essentially means that there is/are some obstruction but minimal. This interpretation is consistent with Applicant's own invention because the elected species, figs. 2A-2E, show dome 12 and channels 14 which, technically, are obstructions; however, since the claim language states "essentially", the dome and channels limit somewhat root growth but not a lot. This is the same in Coplen because Coplen also has central dome 15 and channels 19.

For claim 2, Coplen further teaches wherein the sidewall and the base are separable. Col. 3, lines 57-63.

For claim 5, Coplen further teaches wherein the upwardly facing surface is convex. See fig. 3, self explanatory.

For claim 6, Coplen further teaches wherein the convex surface has a shape selected from conical, semispherical, elliptical, and irregular. See fig. 3, self explanatory.

For claim 8, Coplen further teaches wherein the convex surface has a shape comprising a central arch (fig. 3, where ref. 15 is pointing at) and a surrounding

semispherical region (see fig. 4 the perimeter where refs. 17 & 16 are pointing at).

For claim 9, Coplen further teaches wherein the upwardly facing surface has a center (fig. 3, where ref. 15 is pointing at) and a perimeter (fig. 4, where refs. 16 & 17 are pointing at), and wherein the channels extend over more than half the distance between the center and the perimeter (see fig. 4).

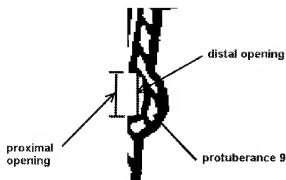
For claim 10, Coplen further teaches wherein the plurality of shoulders are inwardly extending, outwardly extending, or combinations thereof. See fig. 5 for a close up view of the shoulders.

For claim 11, Coplen further teaches wherein the base has a generally circular perimeter. See fig. 4.

For claim 12, Coplen further teaches wherein the perimeter of the generally circular base has a plurality of projections 16.

For claim 13, Coplen further teaches wherein the plurality of shoulders are provided by a plurality of protuberances 9,12,20,21 (see fig. 5 for close up).

For claim 14, Coplen further teaches wherein the plurality of protuberances have a proximal opening (at the entrance of the protuberance 9, the opening entrance is considered proximal opening and at almost the end of the protuberance but not quite near the wall, is the distal opening) in communication with a distal opening. See illustration below.



For claim 15, Coplen further teaches wherein the base has a perimeter with a plurality of projections 16 that extend into the plurality of protuberances 9 through the proximal openings (as shown above, the entrance opening into protuberance 9).

For claim 16, Coplen further teaches wherein the proximal openings are larger than the distal openings. See illustration above, the entrance opening into the protuberance is larger than the distal opening at almost the end of the protuberance.

For claim 17, Coplen further teaches wherein the upwardly facing surface has a convex shape selected from conical, elliptical, semi-spherical, and irregular. See fig. 3, self explanatory.

For claim 18, Coplen further teaches wherein the upwardly facing surface has an irregular convex shape (see fig. 4 for the irregularity) comprising a central arch (FIG. 3, where ref. 15 is pointing at) and a surrounding semi-spherical (see fig. 4) or frustoconical region.

For claim 19, Coplen further teaches wherein the channels extend over more than half the distance from the center of the base to the perimeter of the base. See fig. 4.

For claim 20, Coplen further teaches wherein the channels are disposed to direct roots toward the plurality of protuberances. Although for drainage and reinforcement, these channels can function also to direct roots toward the edge.

For claim 21, Coplen further teaches wherein each channel has a sidewall (from the groove 19 or the grooves themselves since a groove has sidewalls on each side to create the groove) that directs roots toward an individual protuberance. Although for drainage and reinforcement, these channels can function also to direct roots toward the edge.

For claim 22, Coplen further teaches wherein the channels extend into the proximal openings of the protuberances. See fig. 5.

For claim 23, Coplen further teaches wherein the channels have a distal end with a deflecting curve 17.

For claim 24, Coplen further teaches wherein the individual protuberance is one of the plurality of protuberances that provide the plurality of shoulders on each side of the container.

For claim 29, Coplen further teaches a central dome (at ref. 15) directing roots outwardly (inherent due to the convex shape of the dome).

For claim 36, Coplen further teaches wherein the channels are disposed to direct roots toward the plurality of protuberances. Although for drainage and reinforcement, these channels can function also to direct roots toward the edge.

For claim 37, Coplen further teaches wherein each channel has a sidewall (from the groove 19 or the grooves themselves since a groove has sidewalls on each side to create the groove) that directs roots toward an individual protuberance 9.

For claim 38, Coplen further teaches wherein the individual protuberance is one of the plurality of protuberances that provide the plurality of shoulders on each side of the container.

For claim 40, Coplen further teaches wherein the plurality of protuberances have a lower profile with a substantially horizontal region that receives the projections. See fig. 5 for a close up of the lower profile where ref. 15 rests thereon.

For claim 41, Coplen further teaches wherein the proximal opening is larger than the distal opening. See claim 14 and illustration above for explanation.

For claim 60, Coplen teaches a plant container comprising: a container sidewall 1; and a base 15 secured to the container sidewall, the base having an upwardly facing surface (fig. 3 where ref. 15 is pointing at) consisting essentially of a plurality of radially directed channels (created between grooves 19 or grooves 19 themselves can be considered channels). Note that the added transitional language of "consisting essentially of" is taken as "comprising" (see MPEP 2111.03) because, according to the description of the elected species, figs. 2A-2E, and the drawings, the upwardly facing surface has ribs 14 and a dome 12. Thus, in order to consider consisting essentially of

as a close ended term, the upwardly facing surface must only contain the channels, which is not true in Applicant's invention. Hence, Coplen teaches the upwardly facing surface consisting essentially of channels.

For claim 61, Coplen further teaches wherein the base has protrusions (see fig. 5) received within recesses 9 in the container sidewall.

For claim 65, Coplen further teaches the cross-sectional profile of the channels is rectangular. If one was to cut the channels in either the x or y axes, from one side of one groove 19 to the other side of groove 19 is rectangular. See also fig. 4 for cut in the x-axis.

For claim 66, Coplen further teaches wherein the channels (in between ribs 19) are formed by the region between adjacent ribs 19.

For claim 67, Coplen further teaches wherein the width of the ribs is minimized. See fig. 4, self explanatory.

For claim 68, Coplen further teaches wherein the channels reduce (because the ribs are minimized) or prevent root circling. See fig. 4, self explanatory.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 1-24,26-29,31-38,40,41,60,61** are rejected under 35 U.S.C. 103(a) as being unpatentable over Single (6862840) in view of Coplen (as above).

For claim 1, Single teaches a plant container 110, comprising: a sidewall having a plurality of shoulders 56 (see fig. 5); and a base 68 supported on the shoulders. However, Single is silent about the base having an upwardly facing surface with a plurality of radially directed channels.

As mentioned above, Coplen teaches the base with upwardly facing surface and plurality of radially directed channels placed in a container for elimination of excess moisture and to increase the rigidity of the base (col. 3, lines 30-49). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include an upwardly facing surface and plurality of radially directed channels as taught by Coplen in the base of Single, since applying this known method/apparatus of enhancement to a "base" device (automated egg injection machine) would have been predictable in order to eliminate excess moisture and to increase the rigidity of the base. *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

For claim 2, both Single and Coplen teach wherein the sidewall and the base are separable, hence, the combination of both teaches the same.

For claim 3, Single as modified by Coplen (emphasis on Single) further teaches wherein the sidewall is a flexible panel that is bent and fastened in a closed curvilinear shape. See figs. 1-2, although these two figures show a different embodiment, the flexible panels for figs. 1-2 and fig. 5 are the same.

For claim 4, Single as modified by Coplen (emphasis on Single) further teaches wherein fastening the panel around the base constrains displacement" of the base. See

figs. 1-2, although these two figures show a different embodiment, the flexible panels for figs. 1-2 and fig. 5 are the same.

For claims 5 & 6, in addition to the above, Coplen's upwardly facing surface is convex having the shape of a semisphere. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include an upwardly facing surface that is convex having the shape of a semisphere as further taught by Coplen in the base of Single, since applying this known method/apparatus of enhancement to a "base" device (automated egg injection machine) would have been predictable in order to eliminate excess moisture and to increase the rigidity of the base. KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

For claim 7, in addition to the above, Coplen further teaches the convex surface has a perimeter and a center (see above for explanation). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the convex surface with a perimeter and a center as further taught by Coplen in the base of Single, since applying this known method/apparatus of enhancement to a "base" device (automated egg injection machine) would have been predictable in order to eliminate excess moisture and to increase the rigidity of the base. KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007). However, the combination of Single as modified by Coplen is silent about the convex surface has a perimeter and a center that is between 1 and 2 inches higher than the perimeter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the convex surface of the base of Single as modified by

Coplen with a perimeter and a center that is between 1 and 2 inches higher than the perimeter, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art. In re Aller, 105 USPQ 233.

For claim 8, in addition to the above, Coplen's convex surface has a shape comprising a central arch and a surrounding semispherical region. See above of Coplen in the 102 rejection for explanation. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the convex surface with central arch and a surrounding semispherical region as further taught by Coplen in the base of Single, since applying this known method/apparatus of enhancement to a "base" device (automated egg injection machine) would have been predictable in order to eliminate excess moisture and to increase the rigidity of the base. KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

For claim 9, in addition to the above, Coplen's upwardly facing surface has a center and a perimeter, and wherein the channels extend over more than half the distance between the center and the perimeter (as explained in the 102 rejection above anticipated by Coplen). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the upwardly facing surface with a center and a perimeter, and wherein the channels extend over more than half the distance between the center and the perimeter as further taught by Coplen in the base of Single, since applying this known method/apparatus of enhancement to a "base" device (automated egg injection machine) would have been predictable in order to eliminate

excess moisture and to increase the rigidity of the base. KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

For claim 10, Single as modified by Coplen (emphasis on Single) further teaches wherein the plurality of shoulders are inwardly extending, outwardly extending, or combinations thereof. See fig. 5, self explanatory.

For claim 11, both Single and Coplen teach wherein the base has a generally circular perimeter, hence, the combination of the two teaches the same.

For claim 12, in addition to the above, Coplen further teaches wherein the perimeter of the generally circular base has a plurality of projections to hold the base within the protuberance 9 of the container. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a plurality of projections as further taught by Coplen in the base of Single as modified by Coplen in order to provide an attachment area between the base and the container. KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

For claim 13, Single as modified by Coplen (emphasis on Single) further teaches wherein the plurality of shoulders are provided by a plurality of protuberances 72.

For claim 14, Single as modified by Coplen (emphasis on Single) further teaches wherein the plurality of protuberances have a proximal opening 38 in communication with a distal opening 40.

For claim 15, the combination of Single as modified by Coplen teaches wherein the base has a perimeter with a plurality of projections (taught by Coplen) that extend

into the plurality of protuberances (taught by Single) through the proximal openings (taught by Single).

For claim 16, Single as modified by Coplen (emphasis on Single) further teaches wherein the proximal openings are larger than the distal openings. See fig. 5.

For claims 17-19, the limitation has been discussed in the above, thus, please see teaching above of Single as modified by Coplen.

For claim 20, the combination of Single as modified by Coplen would teach the channels (taught by Coplen) are disposed to direct roots toward the plurality of protuberances (taught by Single). See also comment above in the 102 rejection anticipated by Coplen.

For claim 21, the combination of Single as modified by Coplen would teach each channel (taught by Coplen) has a sidewall that directs roots toward an individual protuberance (taught by Single). See also comment above in the 102 rejection anticipated by Coplen.

For claim 22, the combination of Single as modified by Coplen would teach the channels (taught by Coplen) extend into the proximal openings of the protuberances (Single).

For claim 23, the combination of Single as modified by Coplen would teach wherein the channels (taught by Coplen) have a distal end with a deflecting curve. See also comment above in the 102 rejection anticipated by Coplen.

For claim 24, Single as modified by Coplen (emphasis on Single) further teaches wherein the individual protuberance is one of the plurality of protuberances that provide the plurality of shoulders. See fig. 5.

For claims 26-28, Single as modified by Coplen is silent about wherein the channels are between 0.1 and 1 inches tall, 0.15 and 0.75 inches tall, or 0.25 and 0.5 inches tall. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the channels of Single as modified by Coplen be between 0.1 and 1 inches tall, 0.15 and 0.75 inches tall, or 0.25 and 0.5 inches tall, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art. In re Aller, 105 USPQ 233.

For claim 29, the combination of Single as modified by Coplen would teach a central dome directing roots outwardly (taught by Coplen). See also comment above in the 102 rejection anticipated by Coplen.

For claim 31, Single as modified by Coplen is silent about wherein the center of the proximal opening is positioned higher than the center of the distal opening when the sidewall is positioned upright. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the center of the proximal opening is positioned higher than the center of the distal opening when the sidewall is positioned upright in the plant container of Single as modified by Coplen, depending on the user's preference in designing the container. KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007). Note that Applicant has

multiple embodiments of the sidewall of the container. However, the position of the openings appear to not be critical because Applicant fails to define such criticality (see paragraph [0041] of Applicant's PGPUB). In this paragraph, Applicant only states it is "optional" to have the proximal opening is positioned higher than the center of the distal opening when the panel is positioned upright, thus, there is no criticality except that it is a personal preference to make the sidewall with different variation.

For claim 32, the combination of Single as modified would teach the perimeter of the base has a plurality of projections (taught by Coplen) that extend into the plurality of protuberances (taught by Single) through the proximal opening.

For claims 33-41,60-61, the limitations in these claims have been discussed in the above, thus, please see above. Note that the added transitional language of "consisting essentially of" is taken as "comprising" (see MPEP 2111.03) because, according to the description of the elected species, figs. 2A-2E, and the drawings, the upwardly facing surface has ribs 14 and a dome 12. Thus, in order to consider consisting essentially of as a close ended term, the upwardly facing surface must only contain the channels, which is not true in Applicant's invention. Hence, Single as modified by Coplen teaches the upwardly facing surface consisting essentially of channels as explained in the above.

8. **Claims 7,26-28** are rejected under 35 U.S.C. 103(a) as being unpatentable over Coplen (as above).

For claim 7, Coplen is silent about wherein the convex surface has a perimeter and a center that is between 1 and 2 inches higher than the perimeter. It would have

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been obvious to one having ordinary skill in the art at the time the invention was made to have the convex surface of Coplen with a perimeter and a center that is between 1 and 2 inches higher than the perimeter, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art. In re Aller, 105 USPQ 233.

For claims 26-28, Coplen is silent about wherein the channels are between 0.1 and 1 inches tall, 0.15 and 0.75 inches tall, or 0.25 and 0.5 inches tall. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the channels of Coplen be between 0.1 and 1 inches tall, 0.15 and 0.75 inches tall, or 0.25 and 0.5 inches tall, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art. In re Aller, 105 USPQ 233.

Response to Arguments

9. Applicant's arguments filed 3/25/08 have been fully considered but they are not persuasive.

Applicant argued that the added limitation of "wherein the upwardly facing surface is essentially free from obstructions to radial root growth." Support for this amendment is found in the specification at para. [0008], lines 2-3. Coplen does not teach or suggest this limitation. Rather, Coplen teaches that "the plate 15 is provided with a central groove 18 concentric with the walls of the

container..." (Coplen, col. 3, lines 41-44). This central groove is an obstruction to radial root growth in accordance with the present invention.

As explained in the above, the word "essentially" does not mean absolutely no obstruction. As a matter of fact, it is not true that there is absolutely no obstruction in Applicant's own upwardly facing surface because central dome 12 is an obstruction, which is the same as Coplen's central groove 18. In addition, based on this language, it is unclear how the upwardly facing surface is free from obstruction when the ribs are there? In any event, either way, Coplen still teaches the added limitation because if one was to consider the area between the channels (between ribs 19) as the upwardly facing surface, this area is free of obstruction because there is nothing there between the ribs 19.

Applicant argued that regarding claims 8 and 29, Applicant asserts that Coplen, Figure 3 shows a constant curvature rather than "a central arch and a surrounding semispherical region." (See claim 8). In accordance with the claims, the central arch or dome has a different curvature than the surrounding semispherical region. (See Figures 1 B-C, 2B-D, 3-5, 6A-8). The examiner must give meaning to every word of the claim.

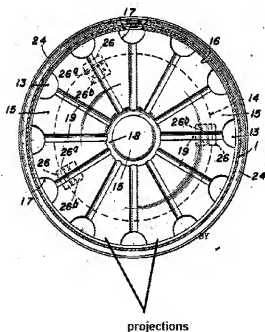
Fig. 3 of Coplen does not show a constant curvature because from central dome 15, there are grooves or ribs 18 separating dome 15 from the rest of the other areas (areas between ribs 19, constituting the channels). The Examiner did give meaning to every word in the claim, the central arch is where ref. 15 is located in fig. 3 and the

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surrounding semispherical region is where ref. 19 and the areas in between ref. 19 creating the channels are semispherical (see fig. 3).

Applicant argued that regarding claim 12, Applicant asserts that Coplen discloses a plate 15 having an edge 16. (Coplen, col. 3, lines 34-36). The edge is not a projection.

The edge 16 of Coplen is not a straight edge because from one notch 17 to another notch 17, there is an area (see illustration below) that can be considered as projection, to which the projection lies on the shoulder or protuberances of the container as shown in fig. 5.



Applicant argued that regarding claims 13,16,36,38,41, the examiner asserts Coplen as disclosing a plurality of protuberances 9. However, Coplen teaches that element 9 is an "outwardly extending bead which extends

completely around the side wall 1 ." (Coplen, col. 3, lines 2-5). There is no plurality of such beads.

The Examiner has further explained protuberances in the above rejection. There are a plurality of protuberances 9,12,2,20,21 providing for the shoulders.

Applicant argued that regarding claims 14,15, the examiner asserts that "outwardly extending bead 9" of Coplen has a proximal opening and a distal opening. (Office Action, page 5). The present specification discusses the concept of a distal opening in relation to Figure 2C (See also para. [0045]) and also in relation to Whitcomb (4,497,132) (See para [0006]). Figure 2C shows "openings 46 in the distal end of the protuberances 44." Coplen does not teach, show or suggest a protuberance with such a distal opening.

As explained in the above, Coplen does teach protuberance with a distal opening. In addition, as mentioned above, Single also teaches protuberances.

Applicant argued that regarding claims 20 and 36, Applicant asserts that the Coplen' grooves 19 would not function effectively to direct roots toward the edge. Since Coplen provides no such teaching, it is assumed that the examiner is taking official notice. Applicant requests that the examiner provide a basis for such notice.

First of all, Applicant's assertion is merely an assertion without evidence that the grooves 19 of Coplen would not function effectively to direct roots toward the edge. Second of all, the Examiner did not state that grooves 19 are the channels, thus, grooves 19 are not supposed to function to direct roots because it is the channels that

direct roots. The channels are the flat or free area between these grooves in Coplen. Although Coplen does not state the channels directing roots, the structure of Coplen's device is capable of performing this function. The Examiner is not taking official notice, the Examiner is stating that Coplen's channels, which is the same as Applicant's, can function to direct roots because of its structure (see MPEP 2114).

Applicant argued that regarding claim 23, Applicant points out that Coplen's elements 17 are "cut out portions or notches 17 which admit air." (Coplen, col. 3, lines 50-53). There is nothing about a cut out portion that would deflect anything.

Upon reviewing the specification, it is believed that claim 23 should have been withdrawn since it claims a deflecting curve 120, which belongs to fig. 8. However, the reason that this claim was considered is because the elected species, figs. 2A-2E, has curved-like protrusions 32 at the distal end of the channels, the claim was considered. Thus, based on the species elected, Coplen's elements 17 do constitute deflecting curves at the distal ends of the channels. In addition, elements 17 do deflect roots down and out the so called cutouts.

Applicant argued that regarding claim 24, the examiner makes an unsupported assertion. Some basis must be provided to support each rejection. The Applicant has not been given an adequate opportunity to respond.

It is not clear what Applicant meant that Applicant has not been given an adequate opportunity to respond because Applicant has the opportunity to argue in this

response filed 3/25/08, just like any other claims argued. The Examiner has not prohibited Applicant from any opportunity to respond.

Applicant argued that regarding claim 40, Applicant asserts that the edge 16 of the plate 15 rests on the upper edge of the flange 13.

For this claim, the argument does not make sense and it is not really an argument, thus, the Examiner is mooted the comment.

Applicant argued that claim 60 has been amended to include the limitation of "the base having an upwardly facing surface consisting essentially of a plurality of radially directed channels." Coplen has a base with a central groove.

As mentioned above, in order to give weight to the word "consisting essentially of" being a close-ended term (as in "consisting of"), Applicant's invention has to not include anything else on the upwardly facing surface. However, this is not the case in Applicant's invention because, clearly, the upwardly facing surface of Applicant's invention also includes dome 12 and ribs 14; thus, Applicant's added term of "consisting essentially of" is nothing more than "comprising" (see MPEP 2111.03). As mentioned above, Coplen teaches the claimed limitation, even with "consisting essentially of".

Applicant argued that claims 1-24, 26-29, 31-38, 40, 41, 60, and 61 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Single (6862840) in view of Coplen as above. Claim 1 includes the limitation of "the base having an upwardly facing surface with a plurality of radially directed channels" and has been amended, as discussed above, to include the further limitation of "wherein the upwardly facing surface is essentially free from obstructions to radial root

growth." This combination of features is not taught or suggested by the cited references.

The argument has been addressed in the above in view of Coplen (since Coplen is relied mainly for the base), thus, please see above for explanation.

Applicant argued that regarding claims 8 and 29, Applicant asserts that Coplen, Figure 3 shows a constant curvature rather than "a central arch and a surrounding semispherical region." (See claim 8). In accordance with the claims, the central arch or dome has a different curvature than the surrounding semispherical region. (See Figures 1 B-C, 2B-D, 3-5, 6A-8). The examiner must give meaning to every word of the claim.

The argument has been addressed in the above in view of Coplen (since Coplen is relied mainly for the base), thus, please see above for explanation.

Applicant argued that regarding claims 12 and 32, Applicant asserts that Coplen discloses a plate 15 having an edge 16. (Coplen, col. 3, lines 34-36). The edge is not a projection.

The argument has been addressed in the above in view of Coplen (since Coplen is relied mainly for the base), thus, please see above for explanation.

Applicant argued that regarding claims 20 and 36, Applicant asserts that the Coplen' grooves 19 would not function effectively to direct roots toward the edge. Since Coplen provides no such teaching, it is assumed that the examiner is taking official notice. Applicant requests that the examiner provide a basis for such notice.

The argument has been addressed in the above in view of Coplen (since Coplen is relied mainly for the base), thus, please see above for explanation.

Applicant argued that regarding claim 23, Applicant points out that Coplen's elements 17 are "cut out portions or notches 17 which admit air." (Coplen, col. 3, lines 50-53). There is nothing about a cut out portion that would deflect anything.

The argument has been addressed in the above in view of Coplen (since Coplen is relied mainly for the base), thus, please see above for explanation.

Applicant argued that regarding claims 26-28, the examiner makes an assertion regarding the obviousness of "the channels of Single as modified by Coplen" (Office Action, page 14). However, Applicant asserts that Single does not disclose channels at all.

Single was not relied on for channels. Coplen was relied on for teaching of channels on a base, to which Single does teach a base. See above response to argument for channels of Coplen.

Applicant argued that claim 60 has been amended to include the limitation of "the base having an upwardly facing surface consisting essentially of a plurality of radially directed channels." Coplen has a base with a central groove.

The argument has been addressed in the above in view of Coplen (since Coplen is relied mainly for the base), thus, please see above for explanation.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3643

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Son T. Nguyen/
Primary Examiner, Art Unit 3643